HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos. 734, 735, 736, 737, 738 and 739 of 2007

W.A.No. 734 OF 2007

Between:

Bank of India & another

… Appellants

And

M/s Sree Sai Baba Builders,
Rep. by its Proprietor
Sri Gulla Suresh

… Respondent

W.A.No. 735 OF 2007

Between:

Bank of India & another

… Appellants

And

G. Ganesh

… Respondent

W.A.No. 736 OF 2007

Between:

Bank of India & another

… Appellants

And

Gulla Lalitha

… Respondent

W.A.No. 737 OF 2007

Between:

Bank of India & another

… Appellants

And

Smt.Gulla Lalitha

… Respondent

W.A.No. 738 OF 2007

Between:

Bank of India & another

… Appellants

And

G.Ganesh

… Respondent

W.A.No. 739 OF 2007

Between:

Bank of India & another

… Appellants

And

G. Ganesh

… Respondent

:: COMMON JUDGMENT ::

Counsel for the appellants : Smt. V. Dyumani
(in all the cases)

Counsel for the respondent : Shri Srikanth Kaveti
(in all the cases)

September 13, 2007

Per G.S. SINGHVI, CJ

These appeals are directed against orders dated 23.08.2007 passed by the learned Single Judge, whereby she confirmed the interim order of status quo passed in favour of the writ petitioners (the respondents herein).

For the sake of convenience, we have taken the facts from the file of Writ Appeal No. 734 of 2007.

Respondent – Shri Sai Baba Builders availed overdraft loan facility of Rs. 24,00,000/- from the Bank of India (for short, the Bank') and mortgaged plot No. 18 (part), Shantideep Housing Colony, Kakaguda, Secunderabad as security for repayment of the loan. On account of its failure to repay the amount of loan, the competent authority of the Bank issued notice to the respondent under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') requiring it to repay the outstanding dues within 60 days. The respondent is said to have submitted objections dated 18.01.2007. After some time, the bank filed Crl.M.P.No. 3787 of 2007 in the Court of Chief Metropolitan Magistrate, Hyderabad under Section 14 of the Act, which was allowed on 30.07.2007 and an Advocate-Commissioner was appointed to take possession of the mortgaged property.

The respondent challenged the action initiated by the Bank under Section 13 of the Act in Writ Petition No.16366 of 2007. In the affidavit filed by the representative of the respondent, it was pleaded that without deciding the objections filed under Section 13 (3-A) of the Act and without issuing possession notice under Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002, the Bank could not have taken steps for taking possession of the mortgaged property.

By an interim order dated 02.08.2007, the learned Single Judge directed the parties to maintain status quo. After hearing learned

counsel for both the parties, the learned Single Judge passed the under challenge, the relevant portions of which are extracted below:

> " Heard learned counsel for both the parties.
>
> As per the affidavit filed in support of the writ petition, the demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') was issued by the respondent-Bank on 08.01.2007. The petitioner states that after receiving the said notice, objections were raised under Section 13(3-A) of the Act. It is alleged that without considering the objections and without issuing possession notice under Rule 8(1) & (2) of the Rules, the respondents were attempting to dispossess the petitioner under Section 14 of the Act. Aggrieved by the said action, the main writ petition has been filed.
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> In the counter affidavit filed on behalf of the respondents, it is stated that the petitioner has never submitted his objection in response to the demand notice dated 08.01.2007. It is further stated that since the petitioner failed to respond, they filed an application under Section 14 of the Act before the Chief Metropolitan Magistrate, Hyderabad vide Crl.M.P.No. 3787 of 2007 and the same was ordered on 30.07.2007 appointing an Advocate Commissioner for taking possession of the property and handover the same to the Authorised Officer of the respondent-Bank.
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> It is contended that the said procedure followed by the Bank is in accordance with the statutory provisions and the petitioner cannot maintain this writ petition under Article 227 of the Constitution of India without exhausting the alternative remedy provided under Section 17 of the Act. In support of her submissions the learned counsel for the respondents relied upon the two decisions of the Supreme Court in Marida Chemicals Limited and others v. Union of India and others (2004(4) SCC 311) and Transcore v. Union of India and another (Civil Appeal Nos. 908, 1374, 2841, 3225, 3226 and 3228 of 2006 dated 29.11.2006)
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> It is to be noted that Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 provides for service of possession notice on the borrower, Sub-rule (2) of Rule 8 states that the possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorized

officer.

From the counter affidavit filed on behalf of the respondents, it is clear that no such notice was issued by the respondents under Section 13(4) of the Act.

The question whether the respondents can take recourse to Section 14 of the Act without making any attempt of taking possession from the borrowers following the procedure prescribed under sub-rule (1) and (2) of the Rule 8 of the Rules requires consideration in the main writ petition.

Till such time, since admittedly the notice as required under Rule 8 has not been issued, I deem it appropriate to protect the possession of the petitioners.

Accordingly, the order of status quo granted on 02.08.2007 is hereby made absolute. Post the main writ petition for final hearing on 22.10.2007 subject to part heard."

In other cases, the learned Single Judge passed short orders by making reference to the detailed order passed in Writ Petition No.16366 of 2007.

Smt. Dyumani relied on the judgments of the Supreme Court in **M/s Mardia Chemicals v. Union of India**[1] and **M/s Transcore v. Union of India**[2] and of the Division Bench of Madras High Court in **Sundaram Home Finance Ltd. v. Tehsildar, Hosur**[3] and argued that the issue of notice under Section 13(4) of the Act is not a condition precedent for taking action under Section 14 of the Act and the learned Single Judge committed a serious error by entertaining the respondents' prayer for interim relief. She further argued that the interim orders passed by the learned Single Judge have the effect of frustrating the object of the Act and, therefore, the Division Bench may set aside the same and allow the bank to recover its dues. She also emphasized that the observation made by the learned Single Judge on the merits of the case is likely to prejudice the appellants' cause. She lastly submitted that the eventual delay in disposal of the main case

should be treated sufficient for entertaining these appeals.

We have thoughtfully considered the submissions of the learned counsel, but have not felt persuaded to interfere with the direction given by the learned Single Judge for maintaining status quo.

Since the writ petitions filed by the respondents are pending adjudication before the learned Single Judge and the same have been ordered to be listed for final hearing on 22.10.2007 subject to part-heard cases, we do not consider it proper to express any opinion on the merits of the respondents' challenge to the action initiated by the appellants under the Act or the contention of the learned counsel for the appellants that the issue of notice under Section 13(4) of the Act is not a condition precedent for taking action under Section 14 thereof. However, we have no hesitation to observe that the discretion exercised by the learned Single Judge to direct the parties to maintain status quo does not suffer from any patent legal infirmity or error warranting interference under Clause 15 of the Letters Patent. The impugned direction is essentially just. It seeks to settle equities between the parties. If the appellant is allowed to dispose of the mortgaged properties even before the decision of the writ petitions, nothing may, perhaps, survive for adjudication by the Court. In any case, disposal of the secured assets by the bank during the pendency of the writ petitions will give rise to serious complications and the respondents would suffer irreparable injury. As against this, the appellant is not going to lose anything by virtue of the order of status quo passed by the learned Single Judge and we do not see any reason to upset the orders under challenge merely because there is a possibility of the Division Bench forming a different opinion on the merits of the case.

The judgments of the Supreme Court and Madras High Court on

which reliance has been placed by the learned counsel for the appellants, do not have any bearing on the adjudication of legality and correctness of the orders under challenge. In **M/s Merdia Chemicals v. Union of India** (supra), the Supreme Court considered challenge to the vires of some of the provisions of the Act and substantially negatived the same. In **M/s Transcore v. Union of India** (supra), the Supreme Court considered the inter relationship between the Act and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and held that the secured creditors can resort to both the enactments for recovery of their dues. In **Sundaram Home Finance Ltd. v. Tehsildar, Hosur** (supra), the Division Bench of the Madras High Court held that once objection filed under Section 13 (3) is overruled, there is no impediment in taking action under Sections 13 (4) and 14 of the Act. In none of these cases, the Supreme Court and Madras High Court considered the legality and justification of interim order passed by the learned Single Judge in the proceedings initiated by the Bank and/or other secured creditor under Sections 13 and 14 of the Act.

In the result, the appeals are dismissed. However, liberty is given to the appellants to make a request to the concerned Bench on 22.10.2007 for out of turn hearing of the writ petitions. We hope and trust that such request would receive sympathetical consideration.

As a sequel to dismissal of the writ appeals, W.A.M.P.Nos. 1473 to 1478 of 2007 filed by the appellants for interim relief are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 13, 2007

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[1] (2004) 4 SCC 311

[2] AIR 2007 SC 712

[3] 2007(1) D.R.T.C. 592 (Mad.)